

REMARKS

The Office Action rejected the pending claims under 35 U.S.C. § 103 as obvious over U.S. patent 5,753,241 (“Ribier I”) in view of U.S. patent 5,130,122 (“Tabibi”) and J. Colloid & Interface Science (“Kenji”) as evidenced by U.S. patent 6,669,849 (“Nguyen”). In view of the following supplemental comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

In their Request for Reconsideration submitted in November 2008, Applicants demonstrated that no *prima facie* case of obviousness had been set forth in the Office Action. For at least this reason, Applicants respectfully submit that the pending rejection should be reconsidered and withdrawn.

Furthermore, submitted concurrently herewith is a Rule 132 declaration demonstrating the unexpected and surprising beneficial properties/characteristics associated with the claimed invention. Thus, assuming that a *prima facie* case of obviousness has been set forth -- which as explained in Applicants’ November 2008 Request for Reconsideration is not the case -- sufficient evidence of unexpected results exists to overcome this rejection, and the rejection should be withdrawn for this reason as well.

More specifically, the Rule 132 declaration compares two Invention Compositions containing solid surfactant and one Comparative Composition containing a liquid surfactant. The turbidity of these compositions was determined using a Hach Model 2100 P portable turbidimeter at various times.

Comparative Composition A containing a liquid sugar surfactant was unstable after 1 month -- crystals were present in the composition and the size of the oily phase globules had increased demonstrating composition instability. (Rule 132 dec., par. 7). Moreover, the turbidity of the composition increased, particularly at increased temperatures. (Rule 132 dec., par. 7). After 2 months, the composition was completely unstable, making turbidity measurements impossible. (Rule 132 dec., par. 7).

In stark contrast, Invention Compositions B and C containing solid sugar surfactant were stable, even after 2 months, and these compositions had low and stable turbidity characteristics, even at increased temperatures. (Rule 132 dec., par. 8).

This vast difference in physical properties among Comparative Composition A and Invention Compositions B and C was surprising and unexpected given the similarity of the compositions (the only noticeable difference being the use of a solid sugar surfactant as opposed to a liquid sugar surfactant. (Rule 132 dec., par. 9). The improved stability and turbidity properties obtained with Invention Compositions B and C are representative of the present invention. (Rule 132 dec., par. 9). Moreover, the improved stability and turbidity properties associated with the invention compositions would be commercially significant -- compositions containing such improved properties would be more appealing to consumers because, for example, more transparent (less turbid) products are generally perceived by consumers as being more pure and, thus, as being more desirable, and because stable products maintaining their original characteristics (and containing minimal crystals) over an extended period of time are also more desirable to consumers. (Rule 132 dec., par. 11).

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Thus, the benefits associated with the claimed invention requiring the presence of a solid sugar surfactant are unexpected and surprising, and could not have been suggested by the applied art. In other words, one of ordinary skill in the art, seeking to produce a nanoemulsion, would not have been motivated to use a solid sugar surfactant in the nanoemulsion with the expectation or belief that a stable, unturbid nanoemulsion would result -- such results were surprising and unexpected. Accordingly, the claimed invention cannot be obvious over the applied art.

For all of the above reasons as well as the reasons set forth in their November 2008 response, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

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Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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